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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/500,347 | 06/25/2004 | Minoru Hoshino | 09450/0201430-US0 | 2617 |
| 33766 | 7590 | 10/31/2006 | EXAMINER | |
| CHERYL F. COHEN, LLC 2409 CHURCH ROAD CHERRY HILL, NJ 08002 | | | HAND, MELANIE JO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/500,347

Applicant(s)

HOSHINO ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

K.M. Reiche
KAREN REICHE
PATENT EXAMINER

MJH

Continuation of 11. does NOT place the application in condition for allowance because: With respect to applicant's arguments regarding claim 1, Examiner clarifies that it is not the pant itself which is collapsed when the elastic members are rearranged as proposed. Rather it is the shape best defined by item 23 in Fig. 1, i.e. the diamond shape region of the central portion 23 of absorbent core 9 that is bounded on four sides by elastic members. By arranging the elastic members taught by Fernfors such that the paths 11,12,13,14 have only one intersecting point in the absorbent core area 9 rather than one each in the front and waist regions, i.e. the diamond shape is collapsed by arranging points of inflection 30 and 31 in Fig. 1 such that they are superimposed on one another, Such a rearrangement would cause the paths 12 and 14 of elastic elements 10 to intersect the leg elastic members at edges 5,6, thus creating an arrangement of elastic members 10 and leg elastics that is substantially identical to that of claimed Fig. 10. Thus Fernfors renders independent claims 1 and 2 unpatentable. Since there is no addition or removal of elastic elements or structural features, merely a rearrangement of said elements which would not destroy the function of the device of Fernfors as stated in the prior Office action, Examiner has made a proper prima facie case of obviousness. With respect to applicant's arguments regarding claim 2, Fernfors teaches that elastic elements 10 have paths 11-14 wherein elements 10 have one end side set along a leg part from a part of said dorsal waist part at one side, an intermediate part that substantially mirrors the first and second leg elastic bodies, and a second end side set along same leg part at a ventral waist part, thus satisfying the relevant limitation of claim 2. With respect to applicant's argument that Examiner did not properly traverse or address applicant's previous arguments with respect to claims 3-14, Examiner stated that applicant's arguments were persuasive (hence the lack of further statement regarding the arguments, and that the new grounds of rejection is based upon a different interpretation of the prior art of Fernfors. This statement applied specifically to claims 1 and 2 wherein the rejections were restated to accommodate the amended claims only. Examiner was affirming the rejections of the dependent claims as the claims remained unamended and thus still unpatentable over Fernfors. With respect to claims 3 and 8, as seen in Fig. 1, the third elastic bodies have portions which clearly extend beyond the leg parts and are depicted as portions of paths 11,12,13,14. With respect to claims 4 and 9, with the modification to the arrangement of the elastic elements of Fernfors, the third part elastic bodies would be located between the vicinities of those positions where the first and second elastic bodies intersect the respective outer flap parts. With respect to claims 5 and 10, Examiner had already stated that the flap parts are disposed on the edges 5,6 of the article, and that the leg elastic elements are disposed inward of said edges, therefore the three-dimensional gathers are positioned outwards beyond the vicinities of the leg elastic elements. Applicant did not delineate what constitutes a vicinity in applicant's disclosure. With respect to claims 6 and 11, Examiner maintains that the rejection is clear on the teachings of Fernfors as well as Examiner's position regarding those teachings as they pertain to the claim limitations. With respect to claims 7 and 12, applicant merely claims that the elastic bodies are positioned "at the surface side of the outer layer sheet" and are "positioned along the longitudinal direction of the absorbent body at the width direction center of the absorbent body". This entire claim, while it sets forth that the elastic bodies are disposed on said outer layer sheet, sets forth limitations of positioning directed to points on the core itself, hence Examiner's rejection. Clarification will be required to overcome the rejection wherein the limitations are directed to positions on the outer layer sheet itself rather than points on the absorbent core. With respect to claims 13 and 14, Fernfors teaches gathers, which necessarily must be attached to a portion of impermeable barrier layer 8 that beigns at edges 5,6 and extends outward in the width direction, otherwise the gathers would have to be attached in a manner so as to be superimposed on the leg elastics, which is clearly not the case. That is how claims 1 and 2 define flap parts, therefore those limitations are rendered unpatentable by Fernfors.